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Suite 2000201 East Kennedy Boulevard
Tampa, FL 33602-5829Telephone (813) 229-1483
Fax (813) 229-1568The Pinehurst Office Center
Suite 101
1400 North Woodward Avenue
Bloomfield Hills, MI 48304-2856Telephone (810) 645-1483
Fax (810) 645-1568The Kalamazoo Building
Suite 400
107 West Michigan Avenue
Kalamazoo, MI 49007-3956Telephone (616) 382-1483
Fax (616) 382-1568The Phoenix Building
Suite 500
222 Washington Square, North
Lansing, MI 48933-1817Telephone (517) 485-1483
Fax (517) 485-1568The Creve Coeur Building
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321 Liberty Street
Peoria, IL 61602-1403Telephone (309) 672-1483
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October 30, 1996

VIA FEDERAL EXPRESS**Mr. William F. Caton**
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554**Re: Comments of The Small Cable Business Association; Response to the Initial
Regulatory Flexibility Analysis; CS Docket No. 95-178**

Dear Mr. Caton:

Enclosed for filing in CS Docket No. 95-178 are the above-referenced documents. We have enclosed the originals and eleven copies of each for distribution. We are also enclosing one copy of each that we ask that you return to us in the enclosed envelope after they have been file stamped "Received".

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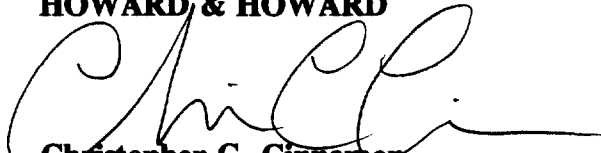
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Mr. William F. Caton
October 30, 1996
Page 2

If you have any questions or need additional information, please contact us.

Very truly yours,

HOWARD & HOWARD



Christopher C. Cinnamon

Enclosures

cc: Chairman Reed Hundt
Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Meredith Jones
John E. Logan
William Johnson
Tom Power
David D. Kinley
Eric E. Breisach

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CERTIFICATE OF SERVICE

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I, Ida Buntin, a secretary at the law firm of Howard & Howard Attorneys, P.C., hereby declare that the Comments of the Small Cable Business Association and the Response to the Initial Regulatory Flexibility Act Analysis, CS Docket No. 95-178, were sent on the 30th day of October, 1996 via Federal Express to:

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

and that in a second Federal Express envelope eight individual envelopes were sent, each containing a copy of the above-referred to document and a copy of the October 30, 1996 letter directed to Mr. Caton. The eight envelopes were addressed as follows:

Ms. Meredith Jones
Chief
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Commissioner James Quello
c/o Mr. Jim Coltharp
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Mr. John E. Logan
Acting Deputy Chief
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Commissioner Rachelle Chong
c/o Suzanne Toller
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

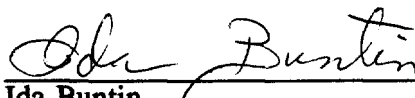
Mr. William Johnson
Deputy Chief
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Commissioner Susan Ness
c/o Karen Gulick
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Chairman Reed Hundt
c/o Ms. Jackie Charney
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Thomas Power
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Dated: October 30, 1996


Ida Buntin

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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OCT 31 1996

In the Matter of

Definition of Markets for Purposes of the
Cable Television Mandatory Television
Broadcast Signal Carriage Rules

Implementation of Section 301(d) of the
Telecommunications Act of 1996

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CC Docket No. 95-178

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**THE SMALL CABLE BUSINESS ASSOCIATION
RESPONSE TO INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS**

Christopher C. Cinnamon
Eric E. Breisach
Kim D. Crooks

HOWARD & HOWARD ATTORNEYS, P.C.
The Phoenix Building, Suite 500
222 Washington Square, North
Lansing, Michigan 48933-1817
(517) 485-1483

Attorneys for the
Small Cable Business Association

Dated: October 30, 1996

regulatory burdens on small cable. SCBA first proposes rules that allow qualified small cable systems to opt out of the change in market definitions for the 1999 election. This will allow certain small cable systems an additional three years to prepare for the impact of market redefinition. In the alternative, SCBA suggests transition rules that will protect existing programming and shift certain costs associated with market redefinition to the entities that benefit from those costs.

The Commission's IRFA and *Further Notice* correctly recognize that market redefinition will have particular impact on small entities, including small cable systems. The Commission has adopted regulatory relief in other dockets specifically directed at small cable:

We acknowledge that a large number of smaller cable operators face difficult challenges in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks, and to prepare for potential competition. Since passage of the 1992 Cable Act, the Commission has worked continuously with the small cable industry to learn more about their legitimate business needs and how our rate regulations might better enable them to provide good service to subscribers while charging reasonable rates.²

The Commission should continue to recognize the unique impact upon small cable of wholesale regulatory changes. SCBA has proposed in its comments alternative transition rules which allow small cable to better survive the impact of market redefinition.

SCBA requests that the Commission both thoroughly consider the impact upon small cable of market redefinition and issue a comprehensive Final Regulatory Flexibility Analysis in connection with the *Further Notice*.

² *Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket Nos. 92-266 and 93-215 (released June 5, 1995) at ¶ 25.

THE SMALL CABLE BUSINESS ASSOCIATION
RESPONSE TO INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

The Small Cable Business Association ("SCBA"), through counsel, responds to the Initial Regulatory Flexibility Act Analysis in the *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 6201 (released May 24, 1996) ("*Market Definition Order*" and "*Further Notice*"). SCBA has filed separate comments that detail the significant impact of the market redefinition rules on small cable companies. SCBA's comments show the disproportionate administrative burdens and costs imposed on small cable arising from the transition to DMAs. At the Commission's invitation, SCBA has proposed transition rules to ameliorate the disproportionate adverse impact of market redefinition on small cable.

SCBA supports the Commission's stated objective to "ease the transition" and "minimize problems" that will result from changing market designations.¹ The Commission's IRFA analysis raises concerns regarding the impact of market redefinition on certain small cable systems. The Commission's IRFA understates the probable impact. The change in market definitions will adversely impact small cable. SCBA's comments in response to the *Further Notice* provide concrete examples of the impact of market redefinition on small cable and detailed cost analyses.

The Commission's objective of a smooth transition from a market definition based on ADIs to one based on DMAs can be accomplished with respect to small cable by creating special transition rules. SCBA has submitted small cable transition rules that will help minimize the

¹ *Further Notice*, ¶ 58.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Chic C. Cinnamon", written over a horizontal line.

Christopher C. Cinnamon

Eric E. Breisach

Kim D. Crooks

HOWARD & HOWARD ATTORNEYS, P.C.

The Phoenix Building, Suite 500

222 Washington Square, North

Lansing, Michigan 48933-1817

(517) 485-1483

Attorneys for the

Small Cable Business Association

Dated: October 30, 1996

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CS Docket No. 95-178

Dated: October 30, 1996

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SUMMARY

The Small Cable Business Association ("SCBA") files these comments in response to the *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 6201 (released May 24, 1996). In these Comments, SCBA identifies specific and substantial cost elements with which small cable operators must contend when must-carry obligations change. These Comments further detail transition rules that will help ameliorate these burdens and costs.

SCBA identifies several examples of markets where, absent transition rules, small cable systems will face wholesale changes in must-carry obligations. Examples show that the shift from DMAs to ADIs will require certain small cable systems to carry six, eight or even ten new must-carry stations. These systems face intense operational disruption and disproportionately high per subscriber compliance costs.

These Comments provide data showing that compliance costs of a *single* additional must-carry due to market redefinition can cost a 2000 subscriber system over \$6500. In cases where wholesale changes in must-carry obligations result in eight new must-carry stations, compliance costs will exceed \$50,000 in 1999. The aggregate impact on small cable will exceed millions.

To minimize these disproportionate burdens and costs, SCBA proposes two sets of transitional rules. One would allow qualifying small cable systems to opt out of market redefinition in 1999. The second set of rules would limit must-carry rights based on market redefinition to cases where the carriage obligation would not disrupt existing programming and where the commercial broadcast station would indemnify the operator for certain compliance costs.

Transitional rules will minimize the regulatory burdens and costs on small cable systems. With the assistance of such rules, small cable operators will be able to devote scarce resources to system upgrades and service improvements, investments that are essential to survival in the increasingly competitive video and telecommunications markets.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Definition of Markets for Purposes of the)	
Cable Television Mandatory Television)	CS Docket No. 95-178
Broadcast Signal Carriage Rules)	
)	
Implementation of Section 301(d) of the)	
Telecommunications Act of 1996)	

**COMMENTS
OF
THE SMALL CABLE BUSINESS ASSOCIATION**

I. INTRODUCTION

The Small Cable Business Association ("SCBA") files these comments in response to the *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 6201 (released May 24, 1996) ("*Market Definition Order*" and "*Further Notice*"). SCBA supports the Commissions efforts in the *Market Definition Order* to ease administrative costs and burdens arising from the transition to Nielsen Designated Market Areas ("DMAs"). Continuing the use of Arbitron Areas of Dominant Influence ("ADIs") for the 1996 election period will permit small cable systems and their customers to plan for the transition to DMAs. SCBA also supports the Commission's consideration of the disproportionate impact and high per subscriber cost that the shift to DMAs will impose on small cable.¹ In these Comments, SCBA identifies specific and substantial cost

¹*Market Definition Order* at ¶¶ 50 and 58.

elements with which small cable operators must contend when must-carry obligations change. These Comments further detail transition rules that will help ameliorate these burdens and costs.

SCBA submits a separate Response to the Initial Regulatory Flexibility Analysis.

SCBA is uniquely qualified to inform the Commission on the impact of the proposed rules on small cable. With over 345 members, SCBA has grown into a national voice for the interests of small cable. Over one-half of SCBA members operate systems serving fewer than 1,000 subscribers. Many of SCBA's members have benefitted from the long-awaited rate relief in the *Small System Order*² and from the greater deregulation under Section 301(c) of the 1996 Telecommunications Act. Still, cost pressures and increasing competition, particularly from DBS providers, continue to squeeze small operators. Small cable is particularly vulnerable to cost pressures relating to programming, including the cost of must-carry compliance.

II. THE COMMISSION SHOULD ESTABLISH TRANSITION RULES TO MINIMIZE THE DISPROPORTIONATE IMPACT ON SMALL CABLE OF THE SHIFT TO DMAs.

A. The transition to DMAs will impose disparate administrative burdens and costs on small cable operators and their subscribers.

The transition to DMA's will change many current market boundaries. The Commission observed that over half of the 211 DMAs will change at least one county from ADI defined markets.³ Nearly all of these changes will occur in fringe areas between contiguous markets, areas most often served by small cable. More populated areas, typically served by larger

²*Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket Nos. 92-266 and 93-215, FCC 95-196 (released June 5, 1995) ("*Small System Order*").

³*Market Definition Order* at ¶ 18.

operators, will experience few changes. Consequently, the burdens and costs of market redefinition will fall disproportionately on small cable and its subscribers.

B. Many small systems will experience fundamental changes in signal carriage obligations.

The following examples demonstrate the consequences for many small cable systems of the shift to DMA-based market definitions.

1. Keya Baha County and Boyd County, Nebraska.

Located in north central Nebraska, Keya Baha County and Boyd County border the South Dakota state line. Arbitron assigned the two rural counties to the Sioux Falls ADI.⁴ At least four small cable systems serve the two counties.⁵ Five commercial broadcast stations currently have must-carry rights in the two counties.⁶

The two counties fall within the Lincoln & Hastings-Kearney Plus DMA.⁷ Without transition relief, must-carry rules could require the small systems serving Keya Baha County and Boyd County to add six commercial broadcast signals solely due to market redefinition.⁸

⁴1991-1992 Television ADI Market Guide.

⁵Cable and Station Coverage Atlas, Warren Publishing Co. (1996) ("1996 Atlas"), p. 482, 484. In these Comments, SCBA uses "small cable system" to describe a system that meets the system and company size limits established in the *Small System Order*.

⁶These stations include: KDLT, NBC, Mitchell; KELO, CBS, Sioux Falls; KTTM, Fox, Huron; KSFY, ABC, Sioux Falls; KTTW, Fox, Sioux Falls. 1991-1992 Television ADI Market Guide.

⁷Neilson Designated Market Areas 1996-1997.

⁸These stations include: KHAS, Hastings, NBC; KCAN, Albion, IND; KOLN, Lincoln, CBS; KHGI, Kearney, ABC; KTVG, Grand Island, Fox, KGIN, Grand Island, CBS. Television & Cable Factbook, Warren Publishing Co. (1996) ("1996 Factbook"), p. A-3.

2. Cleburne County, Alabama.

Located in north central Alabama, Cleburne County borders the Georgia state line. Arbitron assigned the county to the Birmingham, Alabama ADI.⁹ The cable systems serving the county include at least three small cable systems.¹⁰ Seven commercial broadcast stations currently have must-carry rights in the county.¹¹

Cleburne Counties falls within the Atlanta DMA.¹² Without transition relief, must-carry rules could require the small systems serving Cleburne County to add eight commercial broadcast signals solely due to market redefinition.¹³

3. Sanilac County, Michigan.

Sanilac County borders Lake Huron in the "thumb" area of Michigan. Arbitron assigned the county to the Flint ADI.¹⁴ Cable systems serving Sanilac County include at least two small

⁹1991-1992 Television ADI Market Guide.

¹⁰1996 Atlas, p. 361.

¹¹These stations include: WBRC, Birmingham, ABC; WVTM, Birmingham, NBC; WTTO, Birmingham, Fox; WBMG, Birmingham, CBS, WTJP, Gadsden, IND; WABM, Birmingham, IND. 1991-1992 Television ADI Market Guide.

¹²Neilson Designated Market Areas 1996-1997.

¹³These stations include: WSB, Atlanta, ABC; WAGA, Atlanta, CBS; WTLK, Rome, IND; WNGM, Athens, IND; WATL, Atlanta, Fox; WGNX, Atlanta, IND; WHSG, Monroe, IND; WVEU, Atlanta, IND. 1996 Factbook, p. A-1.

¹⁴1991-1992 Television ADI Market Guide.

systems.¹⁵ Five commercial broadcast systems currently have must carry rights in the county.¹⁶

Sanilac County falls within the Detroit DMA.¹⁷ Without transition relief, must-carry rules could require the small systems serving Sanilac County to add eight commercial broadcast signals solely due to market redefinition.¹⁸

4. Hardy County, West Virginia.

Hardy County borders the Virginia state line in northeastern West Virginia. Arbitron classified the county in the Harrisonburg ADI.¹⁹ Systems serving Hardy County include two small cable systems.²⁰ One commercial broadcast station currently has must-carry rights on the systems.²¹

¹⁵1996 Atlas, p. 461-462.

¹⁶These stations include: WNEM, Bay City, NBC; WJRT, Flint, ABC; WEYI, Saginaw, CBS; WAQP, Saginaw, IND; WSMH, Flint, Fox. 1991-1992 Television ADI Market Guide.

¹⁷Neilson Designated Market Areas 1996-97.

¹⁸These stations include: WBSX, Ann Arbor, IND; WDIV, Detroit, NBC; WWJ, Detroit, CBS; WJBK, Detroit, Fox; WKBD, Detroit, IND; WXON, Detroit, IND; WXYZ, Detroit, ABC; WADL, Mount Clemens, IND. 1996 Factbook, p. A-1.

¹⁹1991-1992 Television ADI Market Guide.

²⁰1996 Atlas, p. 598.

²¹WHSV, Harrisonburg, ABC. 1992-1992 Television ADI Market Guide.

Hardy County falls within the Washington D.C. DMA.²² Without transition relief, must-carry rules could require the small systems serving Hardy County to add ten commercial broadcast signals solely due to market redefinition.²³

C. Without transition relief, small operators serving these areas will face intense disruptions of operations.

These examples demonstrate the disruptive impact of the shift to DMAs for these small systems. Current rules will require small operators to analyze for validity a new wave of must-carry demands, acquire headend equipment, reshuffle channel line ups and drop desired programming. These burdens and costs are compounded for many small systems that straddle DMA borders because the systems serve counties in more than one DMA. Absent transition relief, many small systems will face similar administrative burdens and high per subscriber compliance costs.

D. The shift to DMAs will adversely impact many small systems nationwide.

National statistics show that these consequences reach far beyond the above examples. While a large percentage of cable subscribers (78%) are served by larger systems, those systems only account for 10.5% of the country's 11,160 cable systems.²⁴ Cable systems serving 15,000 or fewer subscribers number about 7400 or 66% of all cable systems.²⁵ The Commission has

²²Neilsen Designated Market Areas 1996-97.

²³These stations include: WRC, Washington, NBC; WTTG, Washington, Fox; WJLA, Washington, ABC; WUSA, Washington, CBS; WTMW, Arlington, IND; WDCA, Washington, IND; WBCD, Washington, IND; WVVI, Manassas, IND; WHAG, Hagarstown, NBC; WJAL, Hagarstown, IND. 1996 Factbook, p. A-1.

²⁴*Television and Cable Factbook*, Warren Publishing Co., 1994, p. I-69.

²⁵*Small System Order* at ¶¶ 27-34.

recognized that these small systems typically serve less densely populated areas isolated from major television markets.²⁶ As shown above, such systems often serve the fringe areas of television markets where the most significant impacts of redefinition will occur. The Commission has also observed that the shift to DMAs will affect over 120 markets.²⁷ Hundreds of small cable operators will face wholesale changes in must-carry obligations. Consequently, most of the burdens associated with market redefinition would fall on these small systems and their subscribers.

E. Absent transition relief, the shift to DMAs will impose substantially higher per subscriber cost on small systems.

Changes in must-carry obligations result in specific, quantifiable costs for a cable operator. SCBA provides the following estimate of the costs of change in must-carry obligations of only one channel due to a change in market definitions.

1. Must-carry identification costs.

Due to limited staffing, SCBA members and other small operators often must retain professional assistance to identify potential must-carry stations and assess the validity of must-carry demands. Because many SCBA members and other small operators have discovered broadcasters who erroneously assert must-carry rights, this is an essential effort to protect scarce channel capacity. These costs are incurred for each television market in which a small operator has systems.²⁸ Many must-carry demands also require an analysis of copyright liability and

²⁶*Id.* at ¶ 27.

²⁷*Market Definition Order*, ¶ 18.

²⁸Many small operators have one system on the edge of one television market and the second in an adjacent television market.

the resultant negotiations concerning indemnification.²⁹ Depending on the complexity of the issues involved, a small operator may incur \$250 to \$1500 in professional fees relating to a single must-carry demand.

2. Signal measurement costs.

The small systems impacted by the change to DMAs serve counties on market fringes. Consequently, signal strength will become a factor in determining must-carry status of a commercial broadcast signal from the new market.³⁰ The Commission has placed the burden of testing signal strength on the cable operator.³¹ Operators must devote significant time and resources toward signal measurement and resolving signal strength issues with broadcasters. Few small systems have the internal technical and personnel resources to conduct signal strength testing. Consequently, many small systems must retain telecommunications professionals who possess the required expertise and equipment for proper signal strength testing. Depending on travel required to a small system's often rural headends, fees for signal measurements range between \$1,200 and \$1,500.

3. Headend equipment costs.

A broadcaster is only responsible for the costs of delivering a good quality signal to the principal headend.³² The equipment requirements do not stop there. A cable operator must

²⁹47 CFR § 76.55(c)(2).

³⁰47 CFR § 76.55(c)(3).

³¹*Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, Memorandum Opinion and Order*, MM Docket No. 92-259, FCC 94-251 (released November 4, 1994) at ¶¶ 58-61.

³²76 CFR § 76.55(c)(3).

install a signal processor for each off-air signal. A change in signal carriage requirements necessitates the purchase of a new signal processor for each additional signal. A good quality signal processor, for example, a Scientific Atlantic Model 6150, currently sells for about \$2000.

4. Subscriber notices and channel card revisions.

Subscribers notices and channel card revisions also add significant costs. Per subscriber costs for mailed notices³³ and updated channel cards are especially high for smaller systems. For a system with about 2000 subscribers, costs for printing and mailing programming change notices and channel cards will total about \$1650, or \$0.83 per subscriber. Multiple changes in signals qualifying for must-carry status will usually result in several separate notices and channel card updates as different stations fulfill signal strength and other must-carry requirements at different times.

5. Subscriber confusion and frustration.

A final administrative burden and cost warrants Commission consideration - subscriber confusion and frustration. Undesired channel line up changes, shuffling of programming location and schedules and the deletion of favorite programming consistently cause intense subscriber confusion and frustration. Most small operators can not afford a staff of customer service representatives to manage the surge in questions and complaints. It often falls on the cable operator, his or her family, or a single multi-purpose employee to answer the telephones and explain, for example, why *Jeopardy* is no longer on channel six at 5:00 p.m. For many

³³Despite the change to subscriber notice requirements in Section 301(g) of the 1996 Telecommunications Act, many small operators continue to use mailed notices to announce programming changes. Particularly in cases involving deletion of programming and channel line up shuffling, explanatory letters are essential to address subscriber confusion and irritation.

cable customers in the small communities served by small cable, consistency of programming is critical. The time and effort a small operator must expend at damage control after regulatory-mandated programming changes substantially adds to the administrative burdens and costs of the shift in market definitions.

6. Cost summary.

Based on the above cost estimates supplied by SCBA members, a change in market definition that results in the addition a *single* must-carry signal imposes the following quantifiable costs on a small operator:

New signal processor:	\$2,000
Signal measurement:	\$1,200-1,500
Professional fees:	\$250-1,500
Subscriber notices and channel cards:	\$1,650
Total	\$5,100-6,650 + subscriber confusion and frustration

For a 2,000 subscriber system, this represents a per subscriber cost of \$3.33 for a addition of a single must. As indicated above, many small operators face multiple changes. A change of eight channels, such as for a Sanilac County, Michigan system, could increase the costs to over \$50,000 or over \$25 per subscriber. If only 200 of the over 7,000 small systems in the county must pay these costs, aggregate small cable compliance burdens could easily exceed \$10 million in 1999.

These regulatory compliance costs could not come at a worse time for many small systems. Many SCBA members and other small operators are in the midst of costly plans for system and service upgrades that require high per subscriber investment. Increased capacity and

service offerings will be essential for small cable enhance the quantity and quality of service to rural America and to compete with DBS, MMDS and others. The Commission has already recognized that small systems typically have unique and higher operating and per subscriber capital cost structures.³⁴ The costs of wholesale changes in must-carry obligations will further drain scarce resources from small cable's efforts to serve the cable and telecommunications needs of its customers.

F. Proposed small cable transition rules.

The Commission has sought specific suggestions to assist in the transition process.³⁵ Concerning small cable systems, the Commission seeks comments on special provisions to minimize disruptions during the switch to DMAs.³⁶ The specific information in these Comments reflects the more general observations concerning administrative burdens and costs in the *Market Definition Order*.³⁷ The Commission can ameliorate these disparate burdens on small cable by adopting either or both of the transition rules proposed below.

SCBA proposes two sets of transition rules for small cable: (1) an opt out rule; and (2) rules to protect existing programming and to shift certain must-carry costs.

1. Opt out rules.

The first means of transition relief would permit qualifying small operators to opt out of the change in market definitions for the 1999 election period. Upon receipt of a must-carry

³⁴*Small System Order* at ¶¶ 55-56.

³⁵*Further Notice* at ¶¶ 49-50.

³⁶*Id* at ¶¶ 50 and 58.

³⁷*Market Definition Order* at ¶¶ 31, 32, 35, 40, 43.

request from a station that has attained must-carry status solely due to the shift to DMAs, the cable operator could respond in writing with a statement that: (1) it qualifies as a small operator; and (2) it is opting out of the market redefinition for the 1999 election period. The small operator would be bound by its election throughout the market or markets served by the cable system in question. A small operator could not elect to opt out for one station and then acknowledge must-carry rights for another station located in the same DMA.

The opt out rule would permit small operators an additional three years to invest in system and service upgrades without the substantial burdens and costs of wholesale changes in must-carry obligations. The opt out election would bind the system until the 2002 election period, after which DMA market designations would prevail.

Existing must-carry complaint procedures would apply to disputes over a small operator's election to opt out.

If the system were acquired by a non-qualifying company, the acquiror could maintain the election or restructure carriage obligations as defined by DMAs. Similarly, if the small system became integrated with another system subject to DMA-based must-carry obligations, the operator could restructure its signal carriage obligations accordingly.

2. Protection of existing programming and cost indemnification.

As an alternative, the Commission could consider transitional rules that address two critical concerns of small cable - protection of existing programming and high per subscriber compliance costs. These rules could stand alone or as an alternative to the opt out rules.

a. Protection of existing programming.

Transitional rules should protect existing programming line ups and channel-locked small systems. A qualifying small cable operator could decline carriage of a commercial broadcast station that has attained must-carry status solely due to the shift to DMAs when such carriage would require deletion or repositioning of existing programming. This rule would protect subscribers of channel-locked small systems from losing desirable programming. This rule would also limit costly and confusing channel shuffling resulting from channel positioning demands. In short, if a small cable system had channel capacity available, the DMA-based must-carry station could gain carriage rights on the available capacity.

To balance the interests of broadcast stations, these rules could provide that if a small cable system avoided must-carry due to lack of channel capacity, the broadcast stations could be entitled to carriage as capacity became available due to system upgrades or deletion of other signals.

Existing must-carry complaint procedures could serve to resolve any disputes.

b. Cost indemnification.

Transition rules should allow qualified small cable operators to require commitments for reimbursement for certain costs related to carriage of DMA-based must-carry signals. In addition to copyright indemnification, stations gaining must-carry rights solely due to the shift to DMAs should be required to reimburse a qualified small cable operator for all reasonable costs related to the following:

- (1) headend equipment and facilities required to carry the signal;
- (2) signal quality measurement; and
- (3) subscriber notification and channel card changes.

Existing must-carry complaint procedures could serve to resolve any disputes. The Commission could reexamine these rules before the October 2002 election period.

This cost shifting would place more fairly place the disparate burdens and costs of must-carry compliance on the entities that most directly benefits from must-carry - the commercial broadcasters. Small cable operators should not be required to divert scarce resources from system upgrades and service improvements during the transition period in order to subsidize broadcaster market expansion.

3. Eligible systems

The system and company size standards established in the *Small System Order* should also qualify a system for transitional relief for market definition changes.³⁸ The Commission articulated the appropriateness of this standard in the *Small System Order*.³⁹ The Commission's rationale for allowing such systems relief from the burdens and costs of certain rate regulations also applies to this rulemaking.

The change in market definition standards will impose disproportionate administrative burdens and costs on small cable systems. By providing transition relief to small cable systems as defined in the *Small System Order*, the Commission will grant substantial relief to a large number of small systems while impacting a relatively small portion of the aggregate population

³⁸*Small System Order* at ¶¶ 25-28.

³⁹*Id.* at ¶¶ 14, 26-36.